IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2776 OF 2000

1. Shri Dattatraya G. Wankar
   Sub-Divisional Engineer,
   Road Project Sub-Div. No. I,
   Bungalow No. 1, Jail Road,
   Yerawada, Pune -411 006

2. Shri Ashokkumar P. Abrol
   Sub-Divisional Engineer,
   Office of the Executive Engineer,
   P.W. Building Designs Div.,
   Opp. Hotel Sagar Plaza,
   Camp, Pune - 411 001.

3. Shri Kashinath K. Patil,
   Sub-Divisional Engineer,
   Road Project Sub-Div.
   Satara

4. Shri Makarand K. Chaphalkar
   Sub-Divisional Engineer,
   Office of Superintending Engineer,
   Vigilance & Quality Control Circle,
   Opp. Hotel Sagar Plaza,
   Camp, Pune - 411 001

5. Shri M.S. Kulkarni
   Sub Divisional Engineer,
   Office of Chief Engineer,
   Central Building,
   Pune-411 001

6. Shri D.V. Phadtare,
   Sub-Divisional Engineer,
   P.W. Sub-Div. No. 1,
   Patan

7. Shri M.S. Kunte
   Sub-Divisional Engineer,
   Office of Executive Engineer
   P.W. Div. (North),
   Administrative Building,
   Pune - 411 001.

8. Shri R.D. Katkar,
   Sub-Divisional Engineer,
   Dairy Sub-Div.,
   Wakadewadi,
   Pune

9. Shri V.R. Patil,
   Sub-Divisional Engineer,
   P.W. Sub-Division No. 5,
   New Administrative Building,
   Opp. Council Hall,

Pune - 411 001.

10. Shri Dattatraya B. Kulkarni
Sub-Divisional Engineer,
Road Project Sub-Div. No. VI,
Bungalow No. 1, Jail Road,
Yerawada, Pune - 411 006.

11. Shri Ganesh B. Bhirud,
Sub-Divisional Engineer,
Office of Executive Engineer,
P.W. Building Designs Division,
Opp. Hotel Sagar Plaza,
Camp, Pune - 411 001.

12. Shri Anil B. Shete,
Sub Divisional Engineer,
Road Project, Sub-Div. No. 7,
Bunglow No. 5, Jail Road,
Yerawada, Pune - 411 006

13. Shri Sattar J. Mulla,
Sub-Divisional Engineer,
P.W. Sub-Div., Solapur,
Solapur

14. Shri D.S. Pohanerkar,
Sub-Divisional Engineer,
E.G.S. Sub-Div.,
Barshi

15. Shri G.G. Salunkhe
Sub-Divisional Engineer,
P.W. Sub. Div., Saswad,
Saswad,

16. Shri Subhash A. Chaudhari,
Sub-Divisional Engineer,
Govt. House Sub-I Division,
Raj Bhawan Compound, Ganeshkhind,
Pune - 411 007.

17. Shri Chandrakant R. More
Sub-Divisional Engineer,
L.C.T.R. Integrated Unit,
Pune

18. Shri S.K. Jadhav
Sub Divisional Engineer,
Office of the Chief Engineer,
Pune P.W. Region,
Central Building Annexe,
Pune-411 001

19. Shri S.H. Shikalgar
Sub Divisional Engineer
P.W. Building Designs Div.,
Opp. Hotel Sagar Plaza,
Camp, Pune - 411 001

20. Shri Gururaj V. Hejib
Sub-Divisional Engineer,
P.W. Building Designs Div.,
Opp. Hotel Sagar Plaza
Camp, PUne - 411 001

21. Shri S.D. Ahire
Sub-Divisional Engineer
P.W. Sub-Division No. 2,
P.O. & Tal. Junnar,
Dist.-Pune

22. Shri Chandrashekhar R. Gaikwad
Sub-Divisional Engineer,
P.W. Sub-Div. No. 1,
Central Building Compound,
Pune - 411 001

23. Shri Purushottam H. Holey
Sub-Divisional Engineer,
Office of Executive Engineer,
Public Works Division, Satara West,
Satara

24. Shri Shahanshah A. Basade,
Sub-Divisional Engineer,
Construction Sub-Div. No. 2,
Central Building Compound,
Pune - 411 001.

25. Shri Balaso D. Shinde
Sub-Divisional Engineer,
Z.P. Sub.Div. Mulshi,
Paud, Pune

26. Shri Devidas G. Lokhande
Sub-Divisional Engineer,
P.W. Sub-Division No. 1, Bhor,
Amrai Ali, PO. & Tal. Bhor,
Dist.-Pune

27. Shri Sharad D. Yadwadkar
Sub-Divisional Engineer,
World Bank Sub-Div. No. 1
Central Building Compound,
Pune - 411 001

28. Shri V.B. Paralkar
Sub-Divisional Engineer,
P.W. Sub-Division Koregaon,
Dist.- Satara

29. Shri V.S. Chavan
Sub-Divisional Engineer,
P.W. Sub-Division No. 1, Junnar,

PO. & Tal. Junnar,
Dist.-Pune

30. Shri Dattatraya V. Kanna
Sub-Divisional Engineer,
Regional Laboratory,
Pune -411 001.

31. Shri. Shrikant S. Hatte
Sub-Divisional Engineer,
Medicale Sub-Divn.,
Pune

32. Shri Rajkumar S. Vairagkar,
Sub-Divisional Engineer,
P.W. Division,
Solapur

33. Shri Prabhudeo S. Vastrad
Sub-Divisional Engineer,
Zilla Parishad Sub-Division Karmala,
PO & Tal. Karmala
Dist.-Solapur

34. Shri Ravikant D. Tambekar
Sub-Divisional Engineer,
Zilla Parishad P.W. Sub-Division,
Pandharpur,
PO & Tal. Pandharpur,
Dist.-Solapur

35. Shri Gunwant N. Rajule
Sub-Divisional Engineer,
P.W. Sub-Division Karmala,
PO. & Tal. Karmala,
Dist.-Solapur

36. Shri H.D. Jadhav
Sub-Divisional Engineer,
National Highway Sub-Div. No. 21,
Solapur

37. Shri D.T. Patil,
Sub-Divisional Engineer,
P.W. Sub-Division Haveli,
Pune -6.

38. Shri Kisansing R. Manasawale
Sub-Divisional Engineer,
P.W.D. Circle,
Solapur

39. Shri Sanjay S. Bansode,
Sub-Divisional Engineer,
P.W. Sub-Division Pandharpur,
PO & Tal. Pandharpur,
Dist.-Solapur

40. Shri Vijay Ghuge
Sub-Divisional Engineer,
P.W. Sub-Division Akkalkot,
PO. & Tal. Akkalkot,
Dist.-Solapur

41. Shri Shatrughan B. Bali,
Sub-Divisional Engineer,
Road Project Sub-Division,
Solapur

42. Shri P.S. Chaudhari,
Sub-Divisional Engineer,
Office of District Dy. Registrar,
Co-operative Sector,
Solapur

43. Shri Sanjay K. Gambhire
Sub-Divisional Engineer,
P.W. Circle, Solapur.

44. Shri G.C. Tulsani
Sub Divisional Engineer,
Construction Sub-Divn. No. IV,
Pune

45. Shri J.J. Gumte,
Sub-Divisional Engineer,
P.W. Sub-Division Khed,
Rajgurunagar,
Pune

46. Shri A.R. Lawand,
Sub-Divisional Engineer,
P.W. Sub-Division Vita,
Dist.-Sangli

47. Shri J.S. Nagapure,
Sub-Divisional Engineer,
P.W. Sub-Division,
Satara

48. Shri C.B. Gugale
Sub-Divisional Engineer,
N.H. Divn. No. V,
Pune-411 001.

49. Shri A.D. Pawar,
Assistant Superintendent Engineer,
Public Works Circle,
Satara

50. Shri A.C. Warke,
Sub-Divisional Engineer,
Construction Sub-Division No. 2,
Satara

51. Shri Vivek V. Dandekar
Sub Divisional Engineer,
P.W. Sub-Division Karad,
PO & tal. Karad,
Dist.-Satara

52. Shri P.S. Kamble
Sub-Divisional Engineer,
P.W. Zilla Parishad Div.,
Satara

53. Shri D.K. Shinde
Sub-Divisional Engineer,
P.W., Zilla Parishad Div.,
Satara

54. Shri S.V. Kasar,
Sub-Divisional Engineer,
P.W., Zilla Parishad Sub-Division,
Mahabaleshwar,
Dist.-Satara

55. Shri R.S. Mane,
Sub-Divisional Engineer,
P.W. Sub-Divn., Khandala
Dist.-Satara

56. Shri S.K.Karanje,
Sub-Divisional Engineer,
P.W. Zilla Parishad Sub-Division,
Khandala,
Dist.-Satara

57. Shri S.D. Hambire,
Sub-Divisional Engineer,
P.A. to Executive Engineer,
P.W. Zilla Parishad Div.,
Satara

58. Shri S.I. Dhumale
Sub Divisional Engineer
P.W. Zilla Parishad Sub-Division,
Wai,
Dist.-Satara

59. Shri V.R. Jannu,
Sub-Divisional Engineer,
P.W. Zilla Parishad Sub-division,
Phaltan,
Dist.-Satara

60. Shri S.B. Sonavane,
Sub-Divisional Engineer,
P.W., Zilla Parishad Sub-division,
Koregaon,

Dist.-Satara

61. Shri S.B. Bandgi,
Sub-Divisional Engineer,
P.W., Zilla Parishad Sub-division,
Dahiwadi,
Dist.-Satara

62. Shri D.V. Jadhav
Sub-Divisional Engineer,
Office of the Executive Engineer,
P.W. Designs Division,
Pune - 411 001.

63. Shri Hemchandra P. Junnarkar,
Sub-Divisional Engineer,
Z.P. Sub-Division, Baramati,
Dist.-Pune

64. Shri D.D. Deshmukh,
Sub-Divisional Engineer,
Office of the Executive Engineer,
P.W. Designs Division,
Pune-411 001.

65. Shri C.B. Chivate,
Sub-Divisional Engineer,
P.W. Sub-Division,
Islampur, Dist.-Sangli

66. Shri R.G. Kulkarni,
Sub-Division Engineer,
P.W. Sub-Division,
JAT, Dist.-Sangli

67. Shri S.A. Chaudhary,
Sub-Divisional Engineer,
P.W. Sub-Division No. 2,
JAT, Dist.-Sangli .. Petitioners

V/s.

State of Maharashtra
Through Secretary,
Public Works Department,
Mantralaya,
Mumbai - 32. .. Respondent

Ms. Poonam Mahajan for the Petitioners.
Mr. N.P. Deshpande, AGP. for the Respondent.

CORAM : S. RADHAKRISHNAN &
S.A. BOBDE, JJ.
DATED : 30.11.2004.

ORAL JUDGMENT (PER - S. RADHAKRISHNAN, J.):-

1. By this Petition, the Petitioners are challenging the order dated 14.5.1999 passed by the Maharashtra Administrative Tribunal. The brief facts are that the Petitioners are all Civil Engineering Graduates, who are at present working as Sub Divisional Engineers in Public Works Department. The Petitioners have challenged Rule 5 of 1970 Rules with regard to classification of the different cadres of Maharashtra Services of Engineers especially in Class-II. As per 1970 and 1983 Rules of Maharashtra Services of Engineers Class-II, there were four cadres -(i) Deputy Engineer, who were permanent and Deputy Engineer upto December, 11, 1970, (ii) Assistant Engineer- (i) Direct Recruits of Graduate Engineers through Maharashtra Public Service Commission and (iii) Sub Divisional Engineer (SDE) - promotee Graduate Engineer (iv) Sub Divisional Officer (SDO) - Promotee Diploma Holders.

2. As far as in this Petition is concerned, we are only concerned with two categories, namely Assistant Engineer Grade-I, who are all direct recruits selected through Maharashtra Public Service Commission and also the Sub Divisional Engineers being the promotee Graduate Engineers. The present Petitioners are all promotee Graduate Engineers. The main contention of the Petitioners is that for both the Assistant Engineer Grade-I as well as Sub Divisional Engineer, the basic

qualification required is that they should be a Graduate in Engineering. The functions and responsibilities of both the Assistant Engineer Grade-I and Sub Divisional Engineer, who are the promotee Graduate Engineers are identical. There is also no dispute that the pay scales of both the Assistant Engineer Grade-I and Sub Divisional Engineer are identical. Therefore, the contention of the learned counsel for the Petitioners, is that there are rather a large number of Sub Divisional Engineers and their opportunity of getting promoted is only 25%, which is much smaller compared to the number of Assistant Engineers Grade-I, wherein number of Assistant Engineers Grade-I, who are direct recruits are much smaller and their opportunity of getting promotions is 75%. Therefore, their opportunity of getting promoted is much higher. The next post for promotion is Executive Engineer, which is a Class-I post. To put it in other words 75% of vacancies in the post of Executive Engineer is filled by and from Assistant Engineer Grade-I category. Whereas the balance 25% vacancies in the post of Executive Engineer is filled up by the Sub Divisional Engineers, the category to which the Petitioners belong. The learned counsel for the Petitioners pointed out that the total number of Sub Divisional Engineers are more than double the number of Assistant Engineers Grade-I, therefore the chance of an Assistant Engineer Grade-I getting promoted as an Executive Engineer is six times that of a Sub-Divisional Engineer.

3. It appears that earlier another Writ Petition was filed in this Court, raising various issues with regard to the above rules and one of them was the issue involved in this Petition, and our Division Bench by a common judgment and order dated 9.12.1985 had disposed of the aforesaid group of Writ petitions. As far as the issue involved in this Petition, was considered in paragraph 75 of the said judgment, which reads as under:-

> 75. It was also submitted on behalf of some of the petitioners in these petitions that there ought not to have been any distinction between Assistant Engineers Class II and Sub-Divisional Engineers, since both are graduate Engineers. The Government, however, has decided to divide Class II posts into Deputy Engineers, Assistant Engineers Class II, Sub-Divisional Engineers, and Sub-Divisional Officers. **The scales of pay of Assistant Engineers Class II and Sub-Divisional Engineers as also duties and responsibilities are slightly different.** The cadre of Sub-Divisional Engineers does not have any direct recruits at all. Hence these two are distinct cadres and it is not open to me to say that they ought to have been merged. **(Emphasis supplied).**

The Division Bench while considering the same, came to the conclusion that the Assistant Engineer Class-II, who are now re-designated as Assistant Engineer Class-I and Sub Divisional Engineer, are treated as two distinct cadres, inasmuch as the scales of pay of Assistant Engineer Class-II and Sub Divisional Engineer and also the duties and responsibilities were slightly different.

4. Against the above judgment and order, a Special

Leave Petition was filed before the Supreme court, which was disposed of in the year 1990, wherein the above issue was not even raised in the Special Leave Petition, hence not considered by the Supreme Court, as stated by the learned counsel for the Petitioners.

5. As far as in the present case is concerned, there is no dispute between the learned counsel for the Petitioner and the learned Additional Government Pleader that in both the cadres, i.e. Assistant Engineer Grade (I) and Sub Divisional Engineer, the basic qualification is that, they should be a Graduate in Engineering. There is also no dispute that both the categories have identical functions and powers and also that both the categories have identical pay-scale.

6. The learned counsel for the Petitioners strongly relied on judgment of the Supreme Court in **S.M. Pandit Vs. State of Gujarat Supreme Court Service Rulings Vol. 13 470,** wherein a similar issue was considered by the Supreme Court. Paragraph Nos. 5 and 6 of the said Supreme Court are relevant which read as under:-

> 5. The High Court accepting the contention of the petitioners came to the conclusion that the impugned Rules violate Arts. 14 and 16. It opined that both the directly recruited Mamlatdars as well as the promotees Mamlatdars formed one class. That being so, it was not competent for the Govt. to discriminate between the directly recruited Mamlatdars and the promotee Mamlatdars in the matter of their further promotion. In arriving at its conclusion, the High Court relied on the decisions of this Court in **Mervyn Coutindo and ors. vs. Collector of Customs Bombay and ors. (1) and Roshan Lal Tandon vs. Union of India (2).**

6. The learned Counsel for the appellants did not contest the proposition that if both the directly recruited Mamlatdars as well as the promotee Mamlatdars formed one class then the impugned Rules will be violative of Arts. 14 and 16 on the basis of the decisions of this Court referred to earlier. But he challenged the conclusion of the High Court that they formed one class or one cadre. According to him, the directly recruited Mamlatdars and the promotee Mamlatdars formed two different classes. The High Court rejected that contention and in our opinion rightly. Both the directly recruited Mamlatdars as well as the promotee Mamlatdars are designated as Mamlatdars. They have the same pay scale. They discharge same functions. The posts held by them are interchangeable. There is nothing to show that the two groups are kept apart. The only circumstance urged in support of the contention that they form two different classes is that before promotion to the post of Deputy Collector, the directly recruited Mamlatdars have to put in a certain minimum period of service. This condition, in our opinion, does not indicate that the two groups were kept apart. The High Court seems to think that that condition is not a valid condition. We express no opinion on that question. Even if it is a valid condition, the same does not show that the directly recruited Mamlatdars formed a different class. There is no material to show that the Government had prepared two separate seniority lists, one for the directly recruited Mamlatdars and the other for the promotee Mamlatdars.

7. The Supreme Court in **Roshan Lal Vs. Union of India AIR 1967 S.C. 1889** has observed as under:-

"In our opinion, the constitutional objection taken by the petitioner to this part of the notification is well founded and must be accepted as correct. At the time when the petitioner and the direct recruits were appointed to Grade ‘D’ there was one class in Grade ‘D’ formed of direct recruits and the promotees from the grade of artisans. The recruits from both the sources to Grade ‘D’ were integrated into one class and no discrimination could thereafter be made in favour of recruits from one source as against the recruits from the other source in the matter of promotion to Grade ‘C’. To put it differently, once the direct recruits and promotees are absorbed in one cadre, they form one class and they cannot be discriminated for the purpose of further promotion to the higher Grade ‘C’. In the present case, it is not disputed on behalf of the

first respondent that before the impugned notification was issued there was only one rule of promotion for both the departmental promotees and the direct recruits and that rule was seniority-cum-suitability, and there was no rule of promotion separately made for application to the direct recruits. As a consequence of the impugned notification a discriminatory treatment is made in favour of the existing apprentice. Train Examiners who have already been absorbed in Grade 'D' by March 31, 1966 because the notification provides that this group of Apprentice Train Examiners should first be accommodated en bloc in Grade 'C' upto 80 per cent of vacancies reserved for them without undergoing any selection. As regards the 20 per cent of the vacancies made available for the category of Train Examiners to which the petitioner belongs the basis of recruitment was selection on merit and the previous test of seniority-cum-suitability was abandoned. In our opinion, the present case falls within the principle of the recent decision of this Court in Mervyn v Collector of Customs, Bombay, 1966-3 SCR 600 : (AIR 1967 SC 32). In that case, the petitioners who were Appraisers in the Customs Department filed a writ petition under Article 32, challenging the validity of the rotational system as applied in fixing the seniority of Appraisers and Principal appraisers. The system, as laid down in the relevant departmental circulars was that vacancies occurring in the cadre of Appraisers were to go alternatively to 'promotees' and 'direct recruits'. According to the petitioners of that case this resulted in inequality, especially in view of the fact that the number of direct recruits over the years was very low. Promotion to the grade of Principal Appraisers was from the cadre of Appraisers; only those who had served as Appraisers for five years were entitled to be promoted to the higher grade. Since the direct recruits had to wait for five years before they could become Principal Appraisers the promotees below them who had put in five years as Appraisers became Principal Appraisers. In order to restore the seniority of the direct recruits thus lost, the rotational system was applied to the cadre of Principal Appraisers also i.e. one vacancy was to go to a promotee and the other to a direct recruit. The plea of inequality in violation of Article 16(1) of the Constitution was raised by the petitioners in respect of this also. It was held by this Court, in the first place, that there was no inherent vice in the principle of fixing seniority by rotation in a case when a service is composed in fixed proportion of direct recruits and promotees. It was held in the second place that the same could not be said when the rotational system was applied to the recruitment of Principal Appraisers. The source of recruitment for these was one only, namely, the

grade of Appraisers. There was no question of any quota being reserved from two sources in their case. In so far therefore as the Government was doing what it called restoration of seniority of direct recruits in Appraisers grade on their promotion to the higher grade it was clearly denying equality of opportunity under Article 16 of the Constitution. At page 606 of the Report (SCR): (at pp. 56-57 of AIR) Wanchoo, J., as he then was, speaking for the Court observed as follows:-

"This brings us to the question of Principal Appraisers. We are of opinion that the petitioners have a legitimate grievance in this respect. The source of recruitment of Principal Appraisers is one, namely from the grade of Appraisers. There is therefore no question of any quota being reserved from two sources in their cases. The rotational system cannot therefore apply when there is only one source of recruitment and not two sources of recruitment. In a case therefore where there is only one source of recruitment, the normal rule will apply, namely, that a person promoted to a higher grade gets his seniority in that grade according to the date of promotion subject always to his being found fit and being confirmed in the higher grade after the period of probation is over. In such a case it is continuous appointment in the higher grade which determines seniority for the source of recruitment is one. There is no question in such as case of reflecting in the higher grade the seniority of the grade from which promotion is made to the higher grade. In so far therefore as the respondent is doing what it calls restoration of seniority of direct recruits in Appraisers' grade when they are promoted to the Principal Appraisers' grade. It is clearly denying equality of opportunity to Appraisers which is the only source of recruitment to the Principal Appraisers' grade. There is only one source from which the Principal Appraisers are drawn, namely, Appraisers, the promotion being by selection and five years' experience as Appraiser is the minimum qualification. Subject to the above all Appraisers selected for the post of Principal Appraisers must be treated equally. That means they will rank in seniority from the date of their continuous acting in the Principal Appraisers' grade subject of course to the right of government to revert any of them who have not been found fit during the period of probation. But if they are found fit after the period of probation they rank in seniority from the date they have acted continuously as Principal Appraisers whether they are promotees or direct recruits. The present method by which the respondent puts a direct recruit from the grade of Appraiser, though he is promoted later, above a promotee who is promoted to the grade of Principal Appraiser on an earlier date clearly denies equality

> of opportunity where the grade of Principal Appraiser has only one source of recruitment namely from the grade of Appraisers. In such a case the seniority in the grade of Principal Appraisers must be determined according to the date of continuous appointment in that grade irrespective of whether the person promoted to that grade from the Appraisers' grade is a direct recruit or a promotee. This will as we have already said be subject to the government's right to revert any one promoted as a Principal Appraiser if he is not found fit for the post during the period of probation. The petition therefore will have to be allowed with respect to the method by which seniority is fixed in the grade of Principal Appraisers. That method denies equality of opportunity of employment to the Appraisers who are the only source of recruitment to the grade of Principal Appraisers. What the impugned method seeks to do is to introduce a kind of reservation in respect of the two categories of Appraisers from which the promotions are made, and that cannot be done when the source of promotion is one."

8. The learned Additional Government Pleader appearing on behalf of the Respondents also fairly states that in fact the process of merging both the aforesaid cadres of Assistant Engineer (I) and Sub Divisional Engineer into one has already been initiated by the State of Maharashtra.

9. In any event, having regard to the facts and circumstances, specially when there is absolutely no difference between basic qualification, the basic salary and functions and powers of both the cadres, they ought to be treated as one for the purpose of promotion. The above judgments of the Supreme Court also hold the same view.

10. The learned counsel for the Petitioners brought to

our notice that the Petitioners had impleaded some of the persons, who were promoted as Executive Engineers from the cadre of Assistant Engineers Grade-I, who are the direct recruits being the Respondent No. 1(a) to 1(d). It appears that subsequently the very same Respondents 1(a) to 1(d) had filed a Civil Application, being Civil Application No. 1776 of 2003, seeking a relief that their names should be deleted from the above Petition. Accordingly, their names were deleted from the above Petition.

11. We are clearly of the view that Maharashtra Administrative Tribunal has clearly erred in holding that both the aforesaid cadres are distinct, merely relying on the judgment of our Division Bench as pointed out hereinabove, which proceeded on the basis that there was a slight difference in pay scale and duties. Both the learned counsel for the Petitioners as well as the learned Additional Government Pleader for Respondents categorically state that there is absolutely no difference with regard to the basic qualification, salary, function and powers, in both the above cadres.

12. Under the aforesaid facts and circumstances, we hold that both the cadres ought to be treated as a single cadre for the purpose of promotion to the post of Executive Engineer. Rule is accordingly made absolute in the above terms and the Respondents are directed to give appropriate consequential benefits and reliefs to

the Petitioners. The entire exercise of giving the consequential benefits to the Petitioners shall be completed within a period of six months from today.

(S. RADHAKRISHNAN, J.)

(S.A. BOBDE, J.)